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D.B. CIVIL WRIT PETITION NO.192/2006.
Achla Ram Vs. State & Ors.

Date of Order : 27th April 2007.

HON'BLE MR. JUSTICE P.B. MAJMUDAR
HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. K.S. Gill with
Mr. P.D. Vaishnav, for the petitioner.
Mr. M.R. Singhvi, for the respondents.

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BY THE COURT:

Though the matter has been placed for final orders on stay application, at the request and with the consent of the learned counsel for the parties, and particularly in view of the consensus stated, the writ petition is taken up for final disposal at this stage.

An Ambassador car bearing registration No. RJ24 C 0832 was seized in connection with F.I.R. No.121/2005 Police Station Bali, District Pali for offence under Sections 16/54 of the Rajasthan Excise Act,1950 ('the Act'). The petitioner alleging himself having an agreement for sell from the registered owner of the said vehicle, made an application under Section 54-A of the Act for release of the vehicle; and the Additional Commissioner, Excise proceeded to pass an order on 18.10.2005 under Section 69(4) of the Act for confiscation of the said vehicle for the same having been used for illegal transportation of the liquor; but gave

an option for release of the vehicle upon depositing of fine by the vehicle owner in the sum of Rs.30,000/-.

The said order dated 18.10.2005 was attempted to be questioned by the petitioner in appeal before the Divisional Commissioner, Jodhpur but the said appeal has been rejected on 02.01.2006 for the reason that the provision of appeal as contained in sub-section (5) of Section 69 of the Act has since been deleted w.e.f. 25.05.2005.

The petitioner has filed the present writ petition questioning the amendment aforesaid of deleting sub-section (5) of Section 69 of the Act; questioning the proviso to Section 9A of the Act putting a condition of pre-deposit of 75% of the amount of demand for maintaining appeal under the said provision; and questioning the order dated 02.01.2006 passed by the Divisional Commissioner, Jodhpur. The petitioner has prayed in the alternative that the amount of fine imposed may be reduced.

During the course of submissions in this writ petition, learned counsel for the petitioner proposed that the petitioner would be ready to deposit an amount of Rs.21,000/- as against Rs.30,000/- imposed by the Additional Commissioner; and on such deposit the vehicle may be ordered to be handed over to the petitioner. Learned counsel Mr. M.R. Singhvi appearing for the department after taking instructions, has agreed to such proposition. Learned counsel for the parties have placed on

record the agreement reached for reduction of the amount of fine and for handing over of the vehicle to the petitioner that reads thus,-

> "That, both the parties in the petition today come to the understanding that, if the petitioner deposited 21,000/- Rs. instead of Amount Rs.30,000/- with in a period of 4 weeks, than the seized vehicle "Ambassador Car No. RJ-24 C 0832" would be handed over to the petitioner".

Having regard to the facts and circumstances including the fact stated on behalf of the petitioner that the vehicle in question, an Ambassador Car, is of the make of the year 1982, we are of opinion that the agreement reached by the parties seems to be just and proper and deserves to be approved and the matter deserves to be decided in such terms.

Accordingly, this writ petition is partly allowed to the extent and in terms of the consensus stated by the parties; the impugned order dated 18.10.2005 stands modified with substitution of the amount of fine in the sum of Rs.21,000/- in place of Rs.30,000/- imposed by the Additional Commissioner, Excise. Upon depositing the amount within four weeks from today, the vehicle in question may be handed over to the petitioner in accordance with law. No costs.

(DINESH MAHESHWARI), J. **(P.B. MAJMUDAR) ,J.**

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